

STATE OF CALIFORNIA

MEMO



**To : BOARD DEVELOPMENT COMMITTEE
DAVID LIZÁRRAGA, CHAIR
RYAN BROOKS, MEMBER**

Date: February 28, 2017

**From : WILLIAM G. BRENNAN
ROBIN PARKER
DANIELLE R. VARE**

**Subject: BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE
ADMINISTRATIVE PROCEDURE ACT, BAGLEY-KEENE OPEN MEETING
ACT, POLITICAL REFORM ACT, AND PUBLIC RECORDS ACT-REVISED**

Attached are detailed summaries of the Administrative Procedure Act and Bagley-Keene Open Meeting Act prepared by Robin, and of the Political Reform Act and Public Records Act prepared by Danielle. A brief summary of the Acts are as follows:

Administrative Procedure Act¹

The Administrative Procedure Act (“APA”), Government Code section 11340, et seq., is the basic law controlling administrative agencies in California. The APA consists of three chapters of the Government Code. Chapter 3.5 (Gov. Code §§ 11340-11361), establishes the Office of Administrative Law and sets forth the law covering the quasi-legislative function of administrative agencies, i.e., the promulgation of regulations. When the Board elects to amend, adopt, or repeal regulations, it does so in compliance with Chapter 3.5. Chapter 4.5 (Gov. Code §§ 11400-11475.70), applies to any adjudicative proceeding required to be conducted under Chapter 5 (Gov. Code §§ 11500-11529). These statutes are the basic authority or “rules of procedure” governing administrative quasi-judicial proceedings. They govern administrative hearing procedures unless the statutes relating to a specific agency’s proceedings provide otherwise. (Gov. Code §§ 11410.50, 11415.10, and 11415.20)

The Board’s specific authority to conduct administrative hearings is found in statute, Vehicle Code section 3000, et seq., and in regulation, Title 13, California Code of Regulations (“Title 13”), section 550, et seq. Specific Board procedures set forth with

¹ Non-substantive regulatory amendments pertaining to Sections 551.8 (dismissals of petitions, appeals, and protests), 551.12 (assignment of ALJs and peremptory challenges), 591 (notice of hearing of protest), and 592 (continuances) were effective February 25, 2016. Effective January 1, 2017, Section 550 amended the definition of Protest and Protestant to reflect a Section 3085 protest filed by an Association, as defined. Effective April 1, 2017, Section 590 was amended to reflect Vehicle Code section 3085 protests. There were no other substantive changes to the APA summary nor were there any decisions impacting the Board’s quasi-judicial functions.

particularity in the Vehicle Code and Title 13 are controlling over the APA. Also, Vehicle Code sections 3066(a), 3080(a), and 3085.2(a) expressly incorporate Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 into Board procedures for hearings on protests only. No provisions in the Vehicle Code or Title 13 exempt the Board from the APA. Any provisions of the APA not in conflict or inconsistent would supplement the Vehicle Code and Title 13 sections. To the extent it is subject to the APA, the Board is in compliance with all applicable provisions.

The Bagley-Keene Open Meeting Act²

The Bagley-Keene Open Meeting Act (“Act”), at Government Code section 11120 -11132, is one of the “sunshine laws” that ensures citizens have knowledge of the activities and workings of government. A democratic government assumes that those who elect public officials will have free access to what those public officials are doing. Access to government meetings and records provides citizens with the information they need to participate in the democratic process and to insist that government officials are held accountable for their actions. The best way to emphasize the intent of open meeting laws is to set forth the first section of the Act as follows:

- ❖ It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.
- ❖ In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.
- ❖ The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. (Gov. Code § 11120)

The Political Reform Act³

The Political Reform Act (“PRA”), Government Code section 81000, et seq., is the basic ethics law in California. Although a significant focus of the PRA is on campaign financing and election committees, the main purpose of the PRA, in relation to the Board’s operations, is to ensure that Board decisions are made fairly without regard to who is affected by those decisions. The PRA provides that Board members and staff are required

² There were no statutory changes or decisions impacting the meetings the Board holds.

³ The only substantive change in this summary from the one provided in 2016 is the limit on gifts that may be received by a Board member or staff designated in the Board’s Conflict of Interest Code was increased to \$470.00 effective December 31, 2016. Two non-substantive changes were made in Section 89506(d)(1) and (f)(2). Subsection (d)(1) added the term “governmental” to clarify that travel that is provided by a governmental agency of a board member is not considered a “gift”. Subsection (f)(2) added “nonprofit” to the description to clarify the subsection applies to nonprofits. There were also amendments regarding the treatment of tickets or passes and their reporting. Further information can be found in 2 CCR § 18944.1.

to publicly disclose their financial interests in entities specified in the Board's conflict of interest regulation (Form 700 or Statement of Economic Interests_) and to refrain from participating in decisions in which there is such an interest.

Public Records Act⁴

The California Public Records Act ("CPRA"), Government Code section 6250 et seq., provides public access to state and local government information. It is the other major "sunshine law" that ensures citizens have knowledge of the activities and workings of government. The policy supporting the CPRA is expressed by the legislative intent of the law as follows: "the Legislature...finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code § 6250)

The CPRA favors disclosure unless there is a specific reason not to, which is usually based on confidentiality and privacy considerations. These reasons, set forth as specific statutory exemptions, have been interpreted and evaluated by the courts over the years. Nondisclosure can also be justified if it can be established that the public interest in nondisclosure outweighs the public interest in disclosure. The state policy favoring disclosure was emphasized with the passage of Proposition 59, which states in part as follows: "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."

If you have any questions or comments, please contact me at (916) 324-6197, Robin at (916) 323-1536, or Danielle at (916) 327-3129. This matter is being agendaized for information only at the March 15, 2017, General Meeting.

⁴ There were three substantive changes to this summary from the one provided in 2016. Subdivision (f) was added to Section 6253 to allow for public records to be made available for inspection via website (see subsection (e) on p. 3 for summary.) Section 6254.3 was amended to include personal cellular phone numbers and birth dates are not deemed public records and not subject to disclosure with certain exceptions. The application was also changed to "public agencies". (See Subsection (D)(9) on pp. 6-7.) Section 6254.33 was added to describe disclosure of unique vendor identifying codes. (See subsection (D)(12) on p. 8 for summary). Non-substantive changes were made to Sections 6253.2, 6254 and 6254.5. Section 6253.2 was changed to add home and cellular telephone numbers of person paid by the state to provide in-home supportive services be made available to an exclusive bargaining agent. Section 6254(f)(2)(B) was added to allow withholding of information of victims of human trafficking. Section 6254(ad)((5)(B) and (6)(B) were amended to replace "Legislative Analyst's Office" with "California State Auditor's Office". Section 6254.5 was amended to make non-substantive grammatical changes to the language.